

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE COMMISSIONER OF COMMERCE

In the Matter of the Cosmetology
License of Denise LaVerne Taylor,
License No. 20077924

**RECOMMENDATION ON
DEPARTMENT'S MOTION FOR
SUMMARY DISPOSITION**

This matter came for hearing before Administrative Law Judge Steve M. Mihalchick on August 26, 1997, on a Motion for Summary Disposition filed by the Minnesota Department of Commerce (Department) on August 14, 1997. Philip H. M. Grove and Gregory Dean Gisvold, Assistant Attorneys General, 445 Minnesota Street, Suite 1200, St. Paul, Minnesota 55101-2130, appeared on behalf of the Department. Denise La Verne Taylor, 3185 Karth, Apt. 131, White Bear Lake, Minnesota 55110, has appeared on her own behalf, but made no response to the Department's motion and did not appear for the motion hearing.

Notice is hereby given that, pursuant to Minn. Stat. § 14.61 the final decision of the Commissioner of Commerce shall not be made until this Report has been made available to the parties to the proceeding for at least ten days, and an opportunity has been afforded to each party adversely affected to file exceptions and present argument to the Commissioner. Exceptions to this Order, if any, shall be filed with David Gruenes, Commissioner of Commerce, 133 East Seventh Street, St. Paul, Minnesota 55101.

Based upon all the files, records, and proceedings herein, and for the reasons set forth in the accompanying Memorandum, the Administrative Law Judge makes the following:

RECOMMENDATION

IT IS HEREBY RESPECTFULLY RECOMMENDED that the Commissioner of Commerce:

1. GRANT the Department's Motion for Summary Judgment.
2. Take appropriate disciplinary action against Licensee.

Dated: September 17, 1997.

STEVE M. MIHALCHICK
Administrative Law Judge

NOTICE

Pursuant to Minn. Stat. § 14.62, subd. 1, the agency is required to serve its final decision upon each party and the Administrative Law Judge by first class mail.

MEMORANDUM

Summary disposition is the administrative equivalent of summary judgment. **Minn. R. 1400.5500 K.** Summary judgment is appropriate where there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. **Sauter v. Sauter**, 70 N.W.2d 351, 353 (Minn. 1955); **Louwagie v. Witco Chemical Corp.**, 378 N.W.2d 63, 66 (Minn. App. 1985); **Minn.R.Civ.P. 56.03.** A genuine issue is one that is not sham or frivolous. A material fact is a fact whose resolution will affect the result or outcome of the case. **Illinois Farmers Insurance Co. v. Tapemark Co.**, 273 N.W.2d 630, 634 (Minn. 1978); **Highland Chateau v. Minnesota Department of Public Welfare**, 356 N.W. 2d 804, 808 (Minn. App. 1984).

The Department, as the moving party in this case, has the initial burden of showing the absence of a genuine issue concerning any material fact. To successfully resist a motion for summary disposition, the nonmoving party must show that specific facts are in dispute which have a bearing on the outcome of the case. **Hunt v. IBM Mid America Employees**, 384 N.W.2d 853, 855 (Minn. 1986). The existence of a genuine issue of material fact must be established by the nonmoving party by substantial evidence; general averments are not enough to meet the nonmoving party's burden under Minn.R.Civ.P. 56.05. *Id.*; **Murphy v. Country House, Inc.**, 307 Minn. 344, 351-52, 240 N.W.2d 507, 512 (1976); **Carlisle v. City of Minneapolis**, 437 N.W.2d 712, 715 (Minn. App. 1988). The evidence presented to defeat a summary judgment motion, however, need not be in a form that would be admissible at trial. **Carlisle**, 437 N.W.2d at 715 (citing **Celotex Corp. v. Catrett**, 477 U.S. 317, 324 (1986)). The nonmoving party also has the benefit of the most favorable view of the evidence. All doubts and inferences must be resolved against the moving party. See **Celotex**, 477 U.S. at 325;

Thiele v. Stich, 425 N.W.2d 580, 583 (Minn. 1988); **Greaton v. Enich**, 185 N.W.2d 876, 878 (Minn. 1971); **Dollander v. Rochester State Hospital**, 362 N.W.2d 386, 389 (Minn. App. 1985).

In this matter, the Licensee has made not response to the Department's motion. Based upon the pleadings and affidavits submitted in this matter, and construing the facts in the light most favorable to the Licensee, the underlying facts in this matter appear to be as follows.

Licensee received a cosmetology manager license from the Department on October 2, 1996. On September 5, 10, and 19, 1996, Licensee took the cosmetology manager's licensing exam while representing herself to be Shirley Neal. Licensee signed the application in the name of Shirley Neal. Shirley Neal paid Licensee fifty dollars for taking the exam in Neal's name.

In obtaining her license in Minnesota, Licensee applied for reciprocity based on her experience in Missouri. On Licensee's application for licensure she identified working 5,000 hours at DS Designs between October, 1993, and September, 1995. The Department requested an admission from Licensee that DS Designs has been closed since 1994. Licensee responded "OK. I don't know."

The Commissioner of Commerce is charged with the duty to administer the statute and rules governing cosmetologists by Minn. Stat. § 115A.04, subd. 1. Licensing of cosmetology practitioners is required by Minn. Stat. § 115A.07, subd. 1. Qualifications and testing are required of any person seeking licensure. Minn. Stat. § 115A.07, subd. 2. Minn. Rule 2642.0160 requires applicants for a cosmetology manager license to have 2700 hours of experience in licensed salons.

The Commissioner of Commerce is authorized to impose discipline under Minn. Stat. § 45.027, subd. 7, which states in pertinent part:

Subd. 7. **Actions against licensees.** In addition to any other actions authorized by this section, the commissioner may, by order, deny, suspend, or revoke the authority or license of a person subject to the duties and responsibilities entrusted to the commissioner, as described under section 45.011, subdivision 4, or censure that person if the commissioner finds that:

- (1) the order is in the public interest; and
- (2) the person has violated any law, rule, or order related to the duties and responsibilities entrusted to the commissioner; or
- (3) the person has provided false, misleading, or incomplete information to the commissioner or has refused to allow a reasonable inspection of records or premises; or

- (4) the person has engaged in an act or practice, whether or not the act or practice directly involves the business for which the person is licensed or authorized, which demonstrates that the applicant or licensee is untrustworthy, financially irresponsible, or otherwise incompetent or unqualified to act under the authority or license granted by the commissioner.

* * * *

Taking just the facts not disputed by Licensee, the Department has demonstrated that Licensee has violated laws and rules relating to the administration of cosmetology licensure, provided false information to the Commissioner, and demonstrated untrustworthiness to hold a license from the Commissioner. The same standards were violated whether the act in question is the falsification of Licensee's experience in own application or the taking of a licensure examination for another applicant.

The Department has demonstrated that no genuine issue of fact exists for hearing on the imposition of discipline. The Department is entitled to summary disposition in its favor.

S.M.M.